REMARKS

Claims **1-103** are pending in the application. Claims **1-103** stand rejected. Claim **5** has been amended. No new matter has been added.

Rejection of Claims under 35 U.S.C. §101

Claims **5-8 and 87-103** stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter as not being tangibly embodied in a manner so as to be executable. Claim 5 has been amended to address this rejection and is believed to be in condition for allowance. Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 101 and allow claims **5-8 and 87-103**.

Rejection of Claims under 35 U.S.C. §102

Claims **1, 5, 9-10, 22 and 65** stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ding, U.S. Patent No. 5,699,361 ("Ding"). Applicants respectfully traverse this rejection.

Independent claim 1 is repeated below:

A computer-readable medium comprising:
a command definition, wherein
    said command definition comprises commands for interfacing with a multi-
        channel, multi-media, communication queuing system, and
    said commands are independent of a media type of a communication channel of
        the multi-channel, multi-media, communication queuing system;
and
instructions to use at least one of the commands of the command definition to support
    communication via the communication channel of the multi-channel, multi-media,
    communication queuing system.

Independent claims **5, 11, 22, 45, 65, and 69** contain substantially similar limitations.

Applicants maintain their previously-stated argument that Ding does not teach a command definition. The pseudo-code shown in columns 9-16 of Ding does not comprise *commands for interfacing with* a communication channel, where the commands are "independent of a media type of a communication channel of the multi-channel, multi-media, communication queuing system." For example, the channel allocation code for real-time scheduler process 320 has the following statement:

> If a request R1 is received from an application to allocate one or more channels where R1 includes one or more specified parameters input_par1, input_parJ for each requested channel, ... (see Ding, column 10, lines 55-58).

In contrast, a definition of a command for allocating a communication channel would indicate information such as the name of the command to be used to allocate a communication channel, the parameters for the command, possibly initial values for the parameters, and other information needed to invoke the command that *interfaces with* the communication channel. At best, even if the pseudo-code excerpted above could be characterized as indicating that such a command may exist (which Applicants do not concede), the pseudo-code excerpted above in no way provides the command definition for the command.

Furthermore, even assuming *arguendo* that Ding teaches a command definition comprising commands, the commands are not independent of the media type of the communication channel. The Office Action states that Ding's commands are independent of a media type because "channel types are pre-defined." (See Office Action dated November 16, 2005, page 3, first full paragraph.) While Applicants agree that Ding teaches pre-defined channel types, Applicants respectfully disagree that Ding's pre-defined channel types provide

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any teaching whatsoever of commands that are independent of the media type of the communication channel. In fact, Applicants respectfully submit that exactly the opposite is true.

According to Ding, when an application wishes to communicate, the application must first issue a request to allocate a communication channel. (See Ding, column 14, lines 48-53.) The Office Action claims that Ding's requests for allocating communication channels teach "instructions to use at least one of the commands of the command definition to support communication via the communication channel." (See Office Action dated November 16, 2005, page 3, second full paragraph.) Applicants understand this argument to indicate that an Allocate Channel command is an example of one of the commands defined by Ding. If this is indeed the argument, then the Allocate Channel command must itself be independent of the media type of the communication channel in order to anticipate the claimed invention. However, the Allocate Channel command described in Ding must specify one of the pre-defined channel types in order for the channel allocation to be successful. According to Ding, a communication channel cannot be used by an application unless the channel type has been pre-defined in the channel types table. (See Ding, column 14, lines 48-53.) Therefore, not only must the application requesting to communicate know the media type of the communication channel to request allocation, the application must have knowledge of a number of pre-defined media types and provide the media type before the channel can be allocated. Such a requirement indicates that the commands taught by Ding are specific to the media type of the communication channel, rather than independent of their media type.

In contrast, the commands included in the command definition of the present invention are media-independent. The command definition enables the media-independent communication server to communicate via communication channels of different media types without the need for

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the communication server to have specific knowledge of the media type or of protocols and parameters used to communicate via a particular channel. Instead, all media-specific knowledge is implemented in a channel driver that is provided by the vendor of the communication channel. Consider the following excerpt from page 8 of the originally-filed specification:

> Communication API 125 is designed to provide flexibility to third party vendors for integrating their products [with communication server 109]. In the implementation of a channel driver, a vendor defines the commands the vendor's communication channel 130 understands so that communication server 109 can issue commands for the communication channel 130 to perform. ...

> In addition, the vendor defines the events that the vendor's communication channel 130 provides regarding activity of a specific communication channel 130. Finally, the vendor provides a channel driver 120 implementation, such as a dynamic link library (.DLL file), for performing each command and generating and providing each event. The channel driver 120 implementation is required by communication API 125 to include code to instantiate a driver object and at least one service object.

> By requiring the vendor to provide facilities for the communication server 109 to issue commands to and to receive information from the vendor's communication channel 130, communications API 125 enables communications server 109 to operate independently of the command channel 130 media type and specific protocols to communicate with the vendor's communication device or software.

To show the difference between the media-independent commands of the claimed invention and the commands taught by Ding, consider the situation where a communication channel of a new media type is added to the system. In Ding's system, a new channel type must be defined and added to the channel type table. Significantly, applications wishing to use the new communication channel must be modified to request to allocate the new communication channel, providing the new media type. In contrast, with the claimed invention, no modifications to the communication server software itself are needed because the commands in the command definition are media-independent. Only a few records in the database need to be modified to

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identify the new channel driver that handles media-specific communication with the new communication channel.

Applicants respectfully submit that all of the limitations of independent claims **1, 5, 11, 22, 45, 65, and 69** are not taught by Ding. Accordingly, independent claims **1, 5, 11, 22, 45, 65, and 69,** and respective dependent claims **2-4, 6-10 and 87-103, 12-21, 23-44, 46-64, 66-68, and 70-86** are allowable for at least this reason.

Rejection of Claims under 35 U.S.C. §103

Claims **2-4, 6-8, 11-21, 23-40, 43-64 and 66-103** stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ding in view of Kitaj, U.S. Patent No. 5,946,399 ("Kitaj"). Applicants respectfully traverse this rejection.

Applicants have shown above that claims **1-103** are allowable over the Ding reference standing alone. Furthermore, Applicants maintain their previously-stated position that a prima facie case of obviousness has not been made. The Office Action states that Ding and Kitaj can be combined to teach driver objects and service objects because "data of different kinds would be separately controlled via separated channels as disclosed by Kitaj." (See Office Action dated November 16, 2005, page 4, section 5, through first three lines of page 5.) Applicants again fail to see the proposed relationship between driver objects and service objects and the separation of the different types of data into different communication channels.

Applicants respectfully submit that such an argument runs perilously close to a forbidden hindsight analysis of the references. The Office Action makes no showing of a motivation to combine Ding with Kitaj from within the references themselves; therefore, it must be presumed, and in fact, it is Applicants' position that no such motivation exists in these references. It is

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well-established that the best defense to hindsight is a "rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references." *See Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000); *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25 (Fed. Cir. 2000). A showing of combinability must be "clear and particular" and "broad conclusive statements about the teaching of multiple references, standing alone, are not 'evidence.'" *See Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 666 (Fed. Cir. 2000); *Brown & Williamson*, 229 F.3d at 1125.

> The reason, suggestion, or motivation to combine may be found explicitly or implicitly: 1) in the prior art references themselves; 2) in the knowledge of those of ordinary skill in the art that certain references, or disclosures in those references, are of special interest or importance in the field; or 3) from the nature of the problem to be solved, "leading inventors to look to references relating to possible solutions to that problem."

Ruiz, 234 F.3d at 665.

The Office Action presents nothing more than broad, generalized statements related to the motivation of a person of ordinary skill, which Applicants respectfully submit is insufficient to support a finding of obviousness. The Office Action does not establish that the references which are combined are of special interest or importance in the field. [Indeed, Ding is in the separate and distinct field of multi-media channel formulation, rather than the field of device drivers.] Nor does the Office Action present any evidence of a problem to be solved from within those references themselves.[1] Instead, the Office Action fabricates such a problem to be solved, not from the teachings of the cited references, but from the teaching of Applicants' own disclosure.

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[1] There must be a finding that "there was a disadvantage to the prior systems, such that the 'nature of the problem' will have motivated a person of ordinary skill to combine the prior art references." *Id.* at 666.

Using Applicants' own disclosure as a blueprint for providing the motivation to combine prior art references in an obviousness determination is impermissible. *See W.L. Gore & Assoc. v. Garlock*, 721 F.2d 1540, 1552-53 (Fed. Cir. 1983) ("To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.").

Even if the teachings of Ding and Kitaj were to be combined, the combination of the channel formulation mechanism of Ding with the device driver of Kitaj would not provide a command definition including media-independent commands. At best, the combination teaches using commands that are specific to a channel type in conjunction with a driver object specifically allocated for a particular channel. In contrast, the claimed invention provides the same command definition to interface with communication channels of all media types, and relies on the media-specific functionality to be provided by the channel driver.

The combination of Ding and Kitaj does not teach the command definition for interfacing with a multi-channel, multi-media, communication queuing system, as claimed in independent claim **1**, and as substantially required by independent claims **5, 11, 22, 45, 65, and 69**. As a result, claims **1-103** are allowable for at least this reason.

Claims **2-4, 6-8, 11-21, 23-40, 43-64, and 66-103** include independent claims **45** and **69**. The Office Action rejects claims **45** and **69** for the same reasons for which claims **1, 2, 34, and 36** were rejected. (See Office Action dated November 16, 2005, section 5, pages 9 and 10.) In the rejection of claim **2**, the Office Action appears to indicate that a request for permission to perform an action to a separate object (the input event scheduler) is equivalent to a request for a

service object. (See Office Action, page 4, first paragraph). Applicants respectfully disagree, and can find no reference to a service object in the Kitaj reference.

Applicants respectfully submit that independent claims **45 and 69** are allowable for at least the foregoing reasons. Consequently, independent claim **45**, its dependent claims **46-64**, independent claim **69**, and its dependent claims **70-86** are allowable for at least the foregoing reasons.
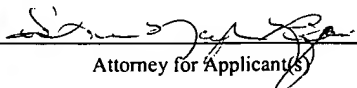
Claims **41-42** stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ding in view of Davidson, U.S. Patent No. 5,983,019 ("Davidson"). Each of claims 41 and 42 depends from independent claim 22. As explained above, independent claim 22 is allowable over the Ding reference standing alone. Furthermore, Applicants respectfully submit that no motivation has been shown to combine Ding and Davidson and that hindsight has again been used. Consequently, dependent claims 41 and 42 are also allowable for at least this reason.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5086.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on
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